

REMARKS

I. General Remarks

Claim 1 is amended. Claims 31-36 and 38-76 are pending.

II. Amendments to the Specification

The "Reference to Related Application" section has been updated as requested by the Examiner.

III. Remarks Regarding the 35 U.S.C. 102(e) Rejection

Claims 31-33, 36, 38-43, 45-49, 54-66, and 68-76 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Pat. No. 7,116,228 issued to Singleton (hereinafter "Singleton"). Applicant respectfully traverses the rejection on the basis that Singleton is not proper prior art under § 102(b).

The instant application claims priority to U.S. Provisional Patent Application Serial No. 60/300,988, filed June 26, 2001. Singleton has a filing date of February 20, 2002.

The instant application's priority date of June 26, 2001 predates the filing date of Singleton (February 20, 2002). Therefore, Singleton is not proper § 102(e) art with respect to the instant application. Accordingly, Applicant respectfully requests the withdrawal of the 35 U.S.C. § 102(e) rejection as to claims 31-33, 36, 38-43, 45-49, 54-66, and 68-76.

IV. Remarks Regarding the 35 U.S.C. 103(a) Rejections

Claims 34, 35, 44, 50-53, and 67 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Singleton in view of U.S. Patent No. 6,788,997 issued to Frederick (hereinafter "Frederick"). Applicant respectfully traverses the rejection on the basis of a statement of common ownership.

The instant application and U.S. Patent No. 7,116,228 issued to Singleton were, on November 21, 2003, both owned by Key-Track, Inc. As the present application was filed on or after November 29, 1999, a statement of common ownership, at the time the invention of the present application was made, is sufficient to remove prior art from the purview of 35 U.S.C. § 103(a) if that prior art would have been prior art only under 35 U.S.C. § 102(e). M.P.E.P. § 706.02(l). Accordingly, U.S. Patent No. 7,116,228 is no longer available as prior art under 103(a) in accordance with 35 U.S.C. § 103(c). Thus, Applicants respectfully submit that the 35 U.S.C. § 103(a) rejection as to claims 34, 35, 44, 50-53, and 67 is no longer applicable and that this rejection should be withdrawn.

V. No Waiver

All of Applicants' arguments and amendments are without prejudice or disclaimer. Additionally, Applicants have merely discussed example distinctions from the prior art references. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by Examiner, Applicants do not acquiesce to Examiner's additional statements, including statements referring to any motivation to combine references. The example distinctions discussed by Applicants are sufficient to overcome the anticipation and obviousness rejections.

CONCLUSION

Authorization is hereby given to charge Deposit Account No. 10-0096 for any deficiency of fees.

The Applicant invites the Examiner to contact the undersigned for a teleconference to resolve any outstanding issues, as this Response is believed to put the case in condition for allowance.

At this time and in view of Applicants' amendments and arguments set forth above, Applicants respectfully submit that all pending claims are allowable and respectfully requests a notice of allowance.

Respectfully submitted,
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CERTIFICATE OF MAILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited on the date shown below with the United States Postal Service, with sufficient postage as First Class Mail (37 CFR 1.8(a)), in an envelope addressed to Mail Stop AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313-1450.

Date: February 21, 2007


Renee Treider